

February 1, 2022

**BY ECF – VIA FEDERAL DEFENDERS**

The Honorable Jesse M. Furman  
United States District Judge  
Southern District of New York  
40 Foley Square  
New York, NY 10007

**RE: United States v. Michael Avenatti  
19 Cr. 374 (JMF)**

Dear Judge Furman:

In response to the Court's Order at Dkt. 359, the defendant objects to any further modification of the proposed instruction and further objects to the government's requested revisions. It is the defense theory of the case and it is settled law in the Second Circuit that the Court must present that theory of the case. See, e.g., United States v. Durham, 825 F.2d 716, 718-19 (2d Cir. 1987) (holding that defendants were entitled to instructions presenting their defense theory); United States v. Dove, 916 F.2d 41, 47 (2d Cir. 1990) (holding that failure to give jury instructions relating to defense theory requires a new trial).

The Court has condensed the proposal made by the defense but has sufficiently communicated to the jury the defense theory as to each of the charges based on the evidence presented. The proposed re-write as requested by the government does not sufficiently describe the defense theory and renders the instruction near meaningless, thus violating Durham and Dove.

Respectfully Submitted,

/s/  
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Michael J. Avenatti  
Defendant